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16 UNITED STATES
17 ENVIRONMENTAL PROTECTION AGENCY
18 REGION IX

19 IN THE MATTER OF:)

20)
21)
22 Montrose Chemical Corporation of)
23 California,)

24 RESPONDENT.)

25 Proceeding Under Section 106(a)) U.S. EPA Docket No. 85-04
26 of the Comprehensive Environ-)
27 mental Response, Compensation,)
28 and Liability Act of 1980)
29 (42 U.S.C. §9606(a)))

30 ADMINISTRATIVE ORDER
31 ON CONSENT

32 I. JURISDICTION

33 This Consent Order is issued pursuant to the authority
34 vested in the President of the United States by Section 106(a)
35 of the Comprehensive Environmental Response, Compensation, and
36 Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), and
37 delegated to the Administrator of the United States Environmental

1 Protection Agency ("EPA" or "Agency") and further delegated
2 to the Assistant Administrator for Solid Waste and Emergency
3 Response, the Regional Administrators, and Director of the
4 Toxics and Waste Management Division, EPA, Region IX. Montrose
5 agrees to undertake all actions required by the terms and con-
6 ditions of this Consent Order. Montrose consents to and will
7 not contest EPA's authority to enter into and enforce the
8 provisions of this Consent Order.

9 II. STATEMENT OF PURPOSE

10 In entering into this Consent Order, the mutual objective
11 of EPA and Montrose Chemical Corporation of California (hereinafter
12 "Montrose") is to obtain through further investigation, information
13 necessary for the performance of a feasibility study which will
14 evaluate the remedial action alternatives which may be appropriate
15 for implementation at the Montrose site in Torrance, California.
16 The portion of this work which is to be performed by Montrose is
17 defined in Article IV, infra, and shall be referred to in this
18 Consent Order as the "Remedial Investigative Work" or "RIW." The
19 activities conducted pursuant to this Consent Order are subject
20 to approval by EPA and shall be consistent with the National
21 Contingency Plan, 40 C.F.R. Section 300.68 (a)-(j) (47 Fed. Reg.
22 31180 (July 16, 1982), revised at 48 Fed. Reg. 40658 (September
23 8, 1983)).

24 III. BACKGROUND INFORMATION/DETERMINATIONS/NON-ADMISSIONS

25 A. Background

26 The following constitutes EPA's background information upon
27 which EPA's Determinations in Article III(B) below are based.

28 1. Montrose Chemical Corporation of California ("Montrose")

1 operated a plant which manufactured dichlorodiphenyltri-
2 chloroethane (DDT). The plant occupied a 13-acre parcel
3 of property ("Montrose site" or "the Site") located at
4 20201 South Normandie Avenue within the incorporated
5 boundaries of the City of Los Angeles near Torrance,
6 California, and was in operation from 1947 to 1982. The
7 Site is surrounded by a heavy industrial area to the
8 southwest and north, easements and light industrial area
9 to the east and immediate south, and by an agricultural
10 area to the west. Approximately one quarter mile to the
11 south and southwest is a residential area with about
12 3,000 residents.

- 13 2. The following raw materials were used to manufacture and
14 process DDT.

15 Ammonium and sodium lignin sulfonates (Orzan)
16 Amorphous silicon dioxide hydrated (Hi-Sil 233)
17 Calcium silicate synthetic (Micro-Cel E)
18 Calcium sulfate dihydrate (industrial ground gypsum)
19 Chloral (trichloroethanal)
20 Monochlorobenzene (MCB)
21 Oleum - 65% (fuming sulfuric acid)
22 Sodium-N-methyl-N-oleoyl taurate (Igepon T-77)
23 Sulfonated lignin (Reax 45A)
24 Sodium hydroxide - 50% solution

- 25 3. DDT and MCB are hazardous substances as defined by
26 §101(14) of CERCLA.

- 27 4. Storm-water runoff from portions of the Site was directed
28 to a waste settling and recycling impoundment. The
impoundment was unlined until 1970.

5. Storm-water runoff from other portions of the Site flowed
to the southeast corner of the Site, off-site through an
unlined ditch, and eventually entered the Torrance Lateral.

1 Water from the Torrance Lateral flows to the Dominguez
2 Channel, which empties into the Consolidated Slip portion
3 of Los Angeles Harbor.

4 6. Analytic results for shallow on-site and off-site soil
5 samples obtained at and in the vicinity of the Montrose
6 site indicate DDT concentrations ranging from 0.028 parts
7 per million (ppm) to a single sampling result of 95,000
8 ppm. Analytic results from deep soil borings in the
9 vicinity of a former on-site impoundment indicate DDT
10 concentrations ranging from 0.6 ppm to 12,621 ppm. DDT
11 has been detected in shallow groundwater beneath the
12 Site in concentrations ranging from 0.1 parts per billion
13 (ppb) to 57,997 ppb. Analytic results from deep soil
14 borings in the vicinity of a former on-site impoundment
15 indicate MCB concentrations ranging from 0.3 ppm to 7400
16 ppm. MCB has been detected in shallow groundwater beneath
17 the Site in concentrations ranging from 5.0 ppb to 237,000
18 ppb.

19 7. The groundwater basin on which the Site is located consists
20 of a series of aquifers: the Bellflower Aquitard (located
21 from 63 feet to an unknown depth below Site) and the Gage
22 Aquifer (located from approximately 120 to 180 feet below
23 Site) comprise the Lakewood formation, and the Lynwood and
24 Silverado Aquifers (located approximately from 240 to 700
25 feet below the Site, separated by clay and sandy clay
26 aquitards) comprise the San Pedros Formation. The Bell-
27 flower Aquitard and Gage Aquifer may be hydraulically
28 connected. The Gage, Lynwood, and Silverado Aquifers

1 are used for drinking water supply, industrial, or
2 irrigation purposes.

3 B. Determinations

4 Based on the Background information set out in Paragraph A
5 of this Article, EPA has determined that:

6 ✓ 1. The Montrose site is a facility as defined in Section
7 101(9) of CERCLA, 42 U.S.C. §9601(9).

8 ✓ 2. The past, current and potential migration of hazardous
9 substances from the Site constitutes an actual and/or
10 threatened "release" as defined in Section 101(22) of
11 CERCLA, 42 U.S.C. §9601(22).

12 ✓ 3. The actual and/or threatened release of hazardous sub-
13 stances from the Site may present an imminent and substan-
14 tial endangerment to the public health or welfare or
15 the environment, as defined in §101(14) of CERCLA, 42
16 U.S.C. §9601(14).

17 ✓ 4. The actions required by this Consent Order are necessary
18 to protect the public health and welfare and the
19 environment.

20 C. Non-admissions, Waiver, and Subsequent Use

21 In entering into this Consent Order, Montrose neither admits
22 nor denies any factual findings or legal determinations made by
23 the Regional Administrator, nor does Montrose waive any right or
24 defenses it may have in any subsequent proceedings relevant to
25 this matter except as expressly stated in Article I of this
26 Consent Order. EPA will not use the provisions of Paragraphs A
27 and B of this Article against Montrose in any subsequent pro-
28 ceeding; provided, however, that Montrose agrees that it will not

1 contest EPA's authority to enter into or enforce the provisions of
2 this Consent Order in any subsequent proceedings arising from any
3 violation of this Consent Order.

4 IV. WORK TO BE PERFORMED

5 A. Scope of Work:

6 By this Consent Order, Montrose agrees to perform specific
7 tasks outlined in the EPA Remedial Investigation/ Feasibility
8 Study Final Workplan, Montrose Facility Site (Torrance,
9 California), Metcalf & Eddy, Inc., October 1984 ("EPA RI/FS
10 Work Plan"), as set forth in Appendix A to this Consent
11 Order. The EPA RI/FS Work Plan and Appendix A are attached
12 hereto and incorporated by reference. The work to be performed
13 by Montrose is referred to in this Consent Order as the
14 "Remedial Investigative Work" or "RIW."

15 B. Contractors:

16 The Remedial Investigative Work shall be performed
17 under the direction and supervision of a qualified professional
18 engineer, certified geologist, hydrologist, and/or any other
19 necessary individual with expertise in hazardous waste Site
20 investigations. Prior to the initiation of Remedial Investi-
21 gative Work, Montrose shall notify EPA of the name and title
22 of such individuals, contractors, or subcontractors who will
23 perform the Remedial Investigative Work.

24 C. RI/FS Work Plan Amendment:

25 EPA shall amend the EPA RI/FS Work Plan to include the
26 full scope of the additional on-site and off-site groundwater
27 investigation to be conducted, and additional on-site soils
28 investigation, after it receives the EPA results from Part 1

1 of the Remedial Investigation. The EPA RI/FS Work Plan and
2 amendment shall include all the work outlined in Appendix A,
3 but may include other work as deemed necessary by EPA.

4 Appendix A represents that portion of the Remedial Investiga-
5 tion which Montrose agrees to perform under this Consent Order.

6 D. Submission of Plan(s):

7 Within thirty (30) calendar days of the effective date
8 of this Consent Order, Montrose shall submit to EPA for
9 approval its revised sampling plan, health and safety plan,
10 and quality assurance project plan (QAPP) for the RIW off-site
11 soil, sediment, and surface water investigation as described
12 in Appendix A. Other sampling plans, health and safety
13 plans, and QAPPs required by this Consent Order shall be
14 submitted in accordance with schedules contained in Appendix
15 A.

16 The plans shall be prepared in accordance with the EPA
17 RI/FS Work Plan as modified by Appendix A and the EPA guidance
18 document "EPA Guidance on Remedial Investigations Under
19 CERCLA" (June, 1985). Of the plans described in this guidance,
20 Montrose shall develop sampling plans for all tasks described
21 in Appendix A, which shall include but not be limited to, a
22 health and safety plan, a description of how permitting
23 requirements will be satisfied, a description of chain of
24 custody procedures, and a plan describing quality control and
25 quality assurance procedures (QAPP) for each distinct
26 sampling event. All plans shall be subject to review and
27 approval by EPA prior to implementation, in accordance with
28 the provisions of this Consent Order.

1 E. Review of Plans:

2 Within forty-five (45) calendar days of receipt of
3 Montrose's plans by EPA, EPA shall notify Montrose in writing
4 of EPA's approval or disapproval of the plans or any part
5 thereof. Plans shall be reviewed by EPA to determine their
6 consistency with the requirements of this Consent Order and
7 applicable guidance documents. In the event of any disapproval,
8 EPA shall specify in writing both the deficiencies and EPA
9 recommended modifications regarding the plans. Thereafter,
10 Montrose shall have thirty (30) calendar days to submit a
11 revised plan.

12 F. Implementation Schedule and Standards:

13 Montrose shall implement EPA approved plans for the
14 Remedial Investigative Work in accordance with Appendix A.
15 Remedial Investigative Work shall be conducted in accordance
16 with the EPA guidance documents "EPA Guidance on Remedial
17 Investigations Under CERCLA" (June, 1985) and "EPA Guidance
18 on Feasibility Studies Under CERCLA" (June, 1985), when
19 applicable, and with standards, specifications, procedures and
20 schedule contained in the EPA RI/FS Work Plan and Appendix A.

21 G. Submission of Data:

22 Montrose shall submit to EPA all data specified in
23 Appendix A, in accordance with the schedule contained in
24 Appendix A.

25 H. Reports:

26 Montrose shall provide a review draft and final Remedial
27 Investigative Work Report to EPA according to the schedule
28 contained in Appendix A. EPA shall review the review draft

1 Remedial Investigative Work Report and provide comments to
2 Montrose according to the schedule contained in Appendix A.

3 I. Submittals:

4 Documents, including reports, approvals, disapprovals,
5 and other correspondence, to be submitted pursuant to this
6 Consent Order, shall be sent by certified mail or expedited
7 overnight to the following addressees or to such other
8 addressees as Montrose or EPA hereafter may designate in
9 writing:

- 10 1) Three copies of documents to be submitted to EPA should
11 be sent to:

12 Ms. Therese Gioia
13 EPA Project Coordinator (T-4-2)
14 US Environmental Protection Agency, Region IX
215 Fremont Street
San Francisco, California 94105

15 One copy of documents to be submitted to EPA shall also
16 be sent to:

17 Mr. Robert P. Ghirelli
18 Executive Officer
Regional Water Quality Control Board
107 South Broadway, Room 4027
19 Los Angeles, California 90012

20 Mr. Angelo Bellomo
21 Chief, Southern California Section
Toxic Substances Control Division
Department of Health Services
22 107 South Broadway, Room 7128
Los Angeles, California 90012

- 23 (2) Documents to be submitted to Montrose should be sent to:

24 Mr. Samuel Rotrosen, President
25 Montrose Chemical Corporation of California
One Metro Plaza, Suite 301
26 505 Thornall Street
Edison, New Jersey 08837
27

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1 Mr. Edward Nemecek
2 Hargis & Associates
2223 Avenida De La Playa, Suite 300
3 La Jolla, California 92037

4 Karl Lytz, Esq.
Latham & Watkins
701 B Street, Suite 2100
5 San Diego, California 92101-8197

6 J. Modification of Remedial Investigative Work Tasks and Time

7 Extensions:

8 In the event Montrose, its contractors, subcontractors,
9 agents or other authorized representatives are unable to
10 perform any task required under this Consent Order, or are
11 unable to perform any such task within the time specified
12 because of circumstances beyond the reasonable control of
13 Montrose, its agents or other authorized representatives,
14 Montrose may request that the task be modified or that the
15 time for performance be extended. Montrose or any of its
16 representatives shall promptly notify EPA's Project
17 Coordinator orally and shall, within seven (7) calendar days
18 of oral notification to EPA, notify EPA in writing of the
19 anticipated length and cause of the delay, the measures
20 taken and to be taken to prevent or minimize the delay, and
21 the timetable by which Montrose intends to accomplish the
22 affected tasks. The failure by Montrose to comply with the
23 notification requirements of this Article shall render this
24 paragraph inapplicable and constitute a waiver of Montrose's
25 rights under this provision.

26 If EPA determines that the written request demonstrates
27 that Montrose, its agents and/or authorized representatives
28 have engaged in good faith efforts to comply with the require-

1 ments of this Consent Order and that good cause exists for
2 granting the requested task modification or time extension,
3 EPA will grant the request in writing. Thereafter, Montrose
4 shall comply with the revised task and/or schedule of
5 performance. No penalty for non-compliance with this Consent
6 Order shall be imposed based upon any modification or extension
7 which was granted pursuant to this paragraph.

→ 8 If EPA determines that the delay was not beyond the
9 reasonable control of Montrose, or that no good cause exists
10 for granting the requested task modification or time extension,
11 this delay shall constitute non-compliance with the Consent
12 Order, and penalties shall accrue from the time of noncom-
13 pliance, except to the extent otherwise provided in Articles
14 X and XI.

15 If any such event occurs which causes delay in the
16 achievement of the requirements of this Consent Order, Montrose
17 shall have the burden of proving that the delay was caused
18 by circumstances beyond the reasonable control of Montrose
19 which could not have been overcome by due diligence. Montrose
20 shall use all reasonable measures to avoid or minimize delay.
21 Increased costs of performance of the terms of this Consent
22 Order shall not be considered circumstances beyond the control
23 of Montrose.

24 The time period for the performance of the activities
25 affected by the delay shall be extended only by the time
26 period of the delay attributed to circumstances beyond the
27 control of Montrose, its agents, or other authorized repre-
28 sentatives. No deadline shall be extended beyond that period

1 of time which is necessary to complete those activities with
2 the least amount of delay possible.

3 K. Additional Remedial Investigation Work:

4 Evaluation of data collected in performing the Remedial
5 Investigative Work may suggest the appropriateness of investi-
6 gative work beyond those tasks and deliverables which will
7 be performed pursuant to this Consent Order. EPA may there-
8 fore determine that additional tasks, including remedial
9 investigative work and/or engineering evaluation, should be
10 performed as a part of the RI/FS. Subject to the Dispute
11 Resolution section (Article X) contained in this Order,
12 Montrose may undertake such additional tasks and these
13 tasks shall be completed in accordance with the standards,
14 specifications and schedules as set forth in this Consent
15 Order or as agreed upon by the parties. Any such undertaking
16 shall be incorporated into this Consent Order in its entirety
17 by sequentially numbered amendments to Appendix A to the
18 Consent Order. Provided, however, that if any dispute
19 arises over the additional tasks to be undertaken pursuant
20 to this section, Montrose may decline to undertake such
21 additional tasks without being in violation of this Consent
22 Order. If Montrose does not perform such additional tasks,
23 EPA reserves the right to perform these tasks and to seek
24 cost recovery pursuant to relevant and applicable laws and
25 regulations. Montrose's non-performance of these tasks
26 shall not constitute a waiver of any defenses it may have
27 to such cost recovery action.

28 The parties agree that the Remedial Investigative Work

1 which is to be implemented using a phased approach is not
2 to be considered "additional work" as contemplated by this
3 Article. The necessity of the performance of that work shall
4 be determined pursuant to the provisions of Appendix A.

5 V. DESIGNATED PROJECT COORDINATORS

6 On or before the effective date of this Consent Order, EPA
7 and Montrose shall each designate a Project Coordinator to handle
8 the technical implementation of the Consent Order. In order to
9 encourage communication between technical staffs of EPA and
10 Montrose, EPA and Montrose shall designate technical representa-
11 tives as project coordinators. These Project Coordinators shall
12 be responsible for overseeing the implementation of this Consent
13 Order. Montrose shall designate its project coordinator as the
14 appropriate contact for the exchange of documents, and for dis-
15 cussions regarding non-legal issues. To the maximum extent
16 possible, communications between Montrose and EPA and the exchange
17 of all documents, including reports, approvals, and other corres-
18 pondence concerning the activities performed pursuant to the
19 terms and conditions of this Consent Order, shall be directed
20 through the Project Coordinators.

21 The Project Coordinators shall meet in accordance with the
22 schedule in Appendix A, and at other such times as may be
23 appropriate, upon the request of either party.

24 The EPA designated "On-Scene-Coordinator," who may be the
25 EPA Project Coordinator, shall have the authority vested in the
26 On-Scene-Coordinator by the National Contingency Plan; 40 C.F.R.
27 Part 300 et seq., 47 Federal Register 31180, July 16, 1982. This
28 includes the authority to halt, conduct, or direct any tasks

1 required by this Consent Order and/or any response actions or
2 portions thereof when conditions present an immediate risk to
3 public health or welfare or the environment. The absence of the
4 EPA Project Coordinator or OSC from the Site shall not be cause
5 for the stoppage of work.

6 VI. QUALITY ASSURANCE

7 Montrose shall use quality assurance, quality control, and
8 chain of custody procedures which have been approved by EPA Region
9 IX for all sample collection and analysis activities. Montrose
10 shall consult with EPA in planning for, and prior to, all sampling
11 and analyses that are part of the Remedial Investigative Work. In
12 order to provide quality assurance and maintain quality control
13 regarding all samples collected pursuant to this Consent Order,
14 Montrose shall:

- 15 A. Ensure that EPA personnel and/or EPA authorized representa-
16 tives are allowed access to the laboratory(s) and personnel
17 utilized by Montrose for analyses, if such need arises after
18 consultation with Montrose technical representatives.
- 19 B. Ensure that the laboratory(s) used by Montrose for analyses
20 perform such analyses according to EPA methods deemed
21 satisfactory to EPA. All sampling protocols to be used for
22 analysis shall be included in the sampling plans.

23 VII. SITE ACCESS

24 To the extent that the Remedial Investigative Work must be
25 performed on property owned or controlled by parties other than
26 Montrose, Montrose has obtained or will use its best efforts to
27 obtain access agreements from the present owners as the need for
28 such access may arise. Such agreements shall provide reasonable

1 access to Montrose, its contractors and agents, EPA, and its
2 contractors and agents. In the event Montrose cannot obtain such
3 access, Montrose shall immediately notify EPA regarding both the
4 lack of, and efforts to obtain such agreements.

5 VIII. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

6 All sampling and/or tests or other data generated by Montrose
7 or on Montrose's behalf, relating to the Remedial Investigative
8 Work shall be made available to EPA, and shall be submitted to EPA
9 as specified in Appendix A. EPA will make available to Montrose
10 the results of sampling and/or tests or other data similarly
11 generated by EPA as specified in Appendix A.

12 Notwithstanding the recognition that both EPA and Montrose
13 wish to preserve whatever rights they have under applicable laws
14 and regulations, Montrose hereby agrees that, solely for the
15 purposes of this Consent Order, and without effecting any general
16 subject matter waiver of any privileges applicable to other types
17 of information, it will not assert any claims of privilege or
18 the attorney work-product doctrine with respect to the following
19 types of information and data:

- 20 1. All analytical sampling results, including raw data from
21 the laboratory utilized by Montrose,
- 22 2. Well and boring lithologic logs,
- 23 3. Geophysical logs,
- 24 4. Water level measurements,
- 25 5. Water level contours,
- 26 6. Field measurements, including readings for pH,
27 conductivity, HNu and OVA,
- 28 7. Weather condition observations,

1 8. Physical and hydraulic aquifer characteristic

2 calculations such as:

- 3 a. storativities
4 b. transmissivities
5 c. hydraulic conductivities
6 d. porosities and effective porosities
7 e. flow velocities.

8 Therefore, Montrose will provide the above information, if
9 available, to EPA upon request, within fifteen (15) calendar days
10 of the request, except as otherwise provided by this Consent
11 Order.

12 At the request of EPA, Montrose shall allow split or dupli-
13 cate samples to be taken by EPA and the Regional Water Quality
14 Control Board and/or their authorized representatives, of any
15 samples collected by Montrose pursuant to the implementation of
16 this Consent Order. Montrose shall notify EPA and Regional Water
17 Quality Control Board not less than twenty (20) calendar days in
18 advance of any sample collection activity except with respect to
19 stormwater sampling events that are a part of the Remedial
20 Investigative Work.

21 EPA and/or any EPA authorized representative shall at least
22 have the authority to enter and freely move about all property at
23 the Site at all reasonable times for the purposes of, inter alia:
24 reviewing the progress of Montrose in carrying out the terms of
25 this Consent Order; conducting such tests as EPA or the Project
26 Coordinator deem necessary; using a camera, sound recording, or
27 other documentary type equipment; and verifying the data submitted
28 to EPA by Montrose. All parties with access to the Site pursuant
29 to this Article shall comply with all approved health and
30 safety plans.

1 Montrose may assert a confidentiality claim, if appropriate,
2 covering part or all of the information requested by this Consent
3 Order, pursuant to the provisions of 40 C.F.R. §2.203(b). Such
4 an assertion shall be adequately substantiated when the assertion
5 is made. Analytical data shall not be claimed as confidential
6 by Montrose. Information determined to be confidential by EPA
7 will be afforded the protection specified in 40 C.F.R. Part 2,
8 Subpart B. If no such claim accompanies the information when it
9 is submitted to EPA, it may be made available to the public by
10 EPA without further notice to Montrose.

11 IX. RECORD PRESERVATION

12 EPA and Montrose agree that each shall preserve, during the
13 pendency of this Consent Order and for a minimum of six (6) years
14 after its termination, all records and documents in their
15 possession or in the possession of their divisions, employees,
16 agents, accountants, contractors, or attorneys which relate in
17 any way to the Site, despite any document retention policy to
18 the contrary. After this six year period, Montrose shall notify
19 EPA within thirty (30) calendar days prior to the destruction
20 of any such documents. Additionally, if EPA requests that some
21 or all documents be preserved for a longer period of time, and
22 establishes a reasonable basis for that request, Montrose shall
23 comply with that request.

24 X. DISPUTE RESOLUTION

25 A. Notice

26 In the event EPA believes Montrose has failed to comply with
27 the requirements of this Consent Order in the prescribed manner
28 or within the prescribed manner as amended, Montrose shall be so

1 informed in writing from EPA by a notice which sets forth any
2 alleged deficiencies in Montrose's performance. Montrose shall
3 have ten (10) calendar days, or such other greater period of time
4 as specified in the deficiency notice, in which to certify that
5 appropriate corrective actions have been completed, to provide
6 EPA with adequate assurances of such completion, or to request an
7 informal conference with EPA pursuant to Paragraph B hereof.

8 Additionally, if Montrose fails to comply with the time limit
9 requirements of this Consent Order and Appendix A, or the Consent
10 Order and Appendix A as amended, no further notice is required
11 unless Montrose requests a modification of the time limit pursuant
12 to the provisions of Article IV(J). If Montrose makes such a
13 request for a modification of tasks or extension of time under
14 the provisions of Article IV(J), and a determination is made that
15 the delay is without good cause under the provisions of that
16 Article, such determination by EPA shall constitute notice of
17 non-compliance to Montrose as required under this Paragraph.

18 B. Informal Conference

19 Montrose and EPA agree that any good faith dispute which
20 arises as to the adequacy of any action, submittal or other
21 performance required under this Consent Order should be resolved
22 through an informal conference. Therefore, EPA and Montrose
23 covenant to enter into such informal discussions upon the request
24 of any party hereto.

25 1. If Montrose wishes to dispute a notice of deficiency or
26 other determination made by EPA, it may request that the parties
27 confer to resolve the dispute through an informal conference.
28 Such conference shall be held within ten (10) calendar days of

1 the lodging of such a request. EPA shall be represented in such
2 discussions by the Director of the Toxics and Waste Management
3 Division, EPA, Region IX, or his delegate (other than the OSC or
4 Project Coordinator), who shall notify Montrose in writing of
5 EPA's final determination with respect to the dispute. This
6 notification of the determination by EPA shall be provided to
7 Montrose within ten (10) calendar days of the informal conference.

8 2. If the dispute is not resolved by the procedures above,
9 any party may exercise such other administrative or legal remedies
10 as are available under applicable laws and regulations. The
11 filing of any administrative or judicial action pursuant to this
12 Article shall not stay or otherwise delay the performance of any
13 undisputed tasks specified in the Remedial Investigative Work.

14 3. Any period during which good faith discussions are
15 conducted pursuant to this Article, or in which corrective action
16 is undertaken pursuant to an agreement reached as a result of
17 such discussions shall be deemed a period of good faith compliance
18 for the purposes of this Consent Order as to which stipulated
19 penalties shall not apply.

20 4. In the event that EPA determines that non-compliance
21 with this Consent Order has resulted or will result in an imminent
22 or substantial endangerment to the public health or welfare or
23 the environment, EPA may exercise any administrative or legal
24 authority available to it under any applicable laws or regulations.

25 XI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

26 Montrose and EPA agree that civil penalties may be appro-
27 priate for noncompliance under this Consent Order by Montrose or
28 any other individuals, contractors or subcontractors within

1 Montrose's control. The purpose of such penalties is to encourage
2 good faith compliance efforts by Montrose in the satisfaction of
3 its obligations under this Consent Order, and not to extract from
4 Montrose any fines for failure to meet any deadlines or require-
5 ments of this Consent Order which may result notwithstanding
6 good faith efforts on the part of Montrose, its contractors,
7 subcontractors or other agents.

8 Subject to the provisions of Articles IV(J) and X, above,
9 Montrose shall pay stipulated penalties in the amounts specified
10 below for failure to comply with the requirements of this Consent
11 Order. Stipulated penalties shall accrue commencing upon
12 Montrose's receipt of the written determination, as specified by
13 Article X, by the Director of the Toxics and Waste Management
14 Division, EPA, Region IX, or his delegate (other than the OSC or
15 Project Coordinator) regarding disputed matters, or upon the
16 failure of Montrose to meet the time limits specified in Appendix
17 A, or commencement of Remedial Investigative Work prior to
18 obtaining the EPA approvals required by this Consent Order, and
19 shall terminate upon the date that Montrose corrects the deficiency
20 in its performance. Penalties may be assessed in an amount not
21 to exceed the daily rates specified below, and in the amount
22 appropriate for the category of the noncompliance as specified
23 in Appendix A hereto:

Period of Failure to Comply	Penalty Per Day of Violation	
	Category A	Category B
1st through 14th day	\$500	\$1000
15th through 44th day	\$1000	\$2500
45th day and beyond	\$2500	\$5000

1 Stipulated penalties shall be payable upon demand by the
2 Director, Toxics and Waste Management Division, EPA, Region IX,
3 through check made payable to the U.S. Environmental Protection
4 Agency, Superfund Accounting, P.O. Box 371003M, Pittsburgh,
5 Pennsylvania 15251, Attention: Superfund Collection Officer.

6 This Article does not preclude EPA from electing to pursue
7 any other remedies or sanctions which may be available to EPA by
8 reason of Montrose's failure to comply with the provisions of
9 this Consent Order. In the event such election is made, however,
10 if EPA initiates any form of action seeking monetary penalties or
11 sanctions, this Article shall not apply to the specific instance
12 of failure of performance or event of non-compliance giving rise
13 to the stipulated penalty assessment under this Article.
14 Additionally, if EPA initiates any form of action seeking
15 exclusively non-monetary relief, this Article shall apply to the
16 specific instance of failure of performance or event of non-
17 compliance giving rise to the stipulated penalty assessment
18 under this Article only if EPA prevails in such action.

19 XII. RESERVATION OF RIGHTS

20 Notwithstanding compliance with the terms of this Consent
21 Order, Montrose is not released from liability, if any, for any
22 actions beyond the terms of this Consent Order taken by EPA re-
23 garding the Site. EPA reserves the right to take any enforcement
24 action pursuant to CERCLA and/or any available legal authority,
25 including the right to seek injunctive relief, monetary penalties,
26 and punitive damages for any violation of law or this Consent
27 Order.

28 In entering into this Consent Agreement, Montrose and EPA

1 expressly reserve all rights and defenses that they may have,
2 including EPA's right to disapprove work performed by Montrose,
3 to request further information from Montrose, and to request
4 that Montrose perform tasks, pursuant to Article IV(K) above, in
5 addition to those detailed in the EPA RI/FS Work Plan and Appendix
6 A, as provided in this Consent Order. In the event that Montrose
7 declines to perform any additional and/or modified tasks, EPA
8 will have the right to undertake any remedial investigation
9 and/or feasibility study work. In addition, EPA reserves the
10 right to undertake remedial investigation/feasibility study,
11 removal and remedial actions at any time. In either event, EPA
12 reserves the right to seek reimbursement from Montrose thereafter
13 for such costs incurred by the United States. By its execution
14 of the Consent Order and its performance of the work specified in
15 Appendix A, Montrose does not admit any liability with respect to
16 the Site, nor waive any defenses it may have with respect to
17 actions concerning the Site.

18 XIII. REIMBURSEMENT OF COSTS

19 Montrose shall, within ninety (90) calendar days of the
20 effective date of this Consent Order, remit a check in the total
21 amount of \$30,000 made payable to the Hazardous Substance Response
22 Trust Fund, to offset EPA's oversight costs for the Remedial
23 Investigative Work to be performed by Montrose pursuant to this
24 Consent Order. Checks should specifically reference the identity
25 of the Site and be addressed to:

26 U.S. Environmental Protection Agency
27 Superfund Accounting
28 P.O. Box 371003M
Pittsburgh, Pennsylvania 15251

1 Notice and a copy of any check paid pursuant to this Article
2 shall be submitted to EPA at the address in Article IV(I) above.

3 By its payment of the costs specified in this Article,
4 Montrose does not admit or otherwise acknowledge in any way the
5 validity or appropriateness of any cost recovery action which may
6 be instituted by EPA for past, present, or future costs incurred
7 in connection with this Site, nor does Montrose waive any defenses
8 or objections available to it should EPA initiate any such cost
9 recovery action. Additionally, if EPA initiates a cost recovery
10 action, Montrose reserves the right to contest all costs incurred
11 by EPA.

12 EPA reserves the right to bring an action against Montrose
13 pursuant to Section 107 of CERCLA for recovery of all response
14 and oversight costs incurred by the United States related to this
15 Consent Order, as well as any other past and future costs incurred
16 by the United States in connection with response activities
17 conducted pursuant to CERCLA at this Site.

18 XIV. OTHER CLAIMS

19 Nothing in this Consent Order shall constitute or be construed
20 as a release from any claim, cause of action or demand in law or
21 equity against any person, firm, partnership, or corporation not
22 a signatory to this Consent Order for any liability it may have
23 arising out of or relating in any way to the generation, storage,
24 treatment, handling, transportation, release, or disposal of any
25 hazardous substances, hazardous wastes, pollutants, or contaminants
26 found at, taken to, or taken from the Site.

27 This Consent Order does not constitute any decision on
28 preauthorization of funds under Section 111(a)(2) of CERCLA.

1 42 U.S.C. §9611(a)(2).

2 XV. OTHER APPLICABLE LAWS

3 All actions required to be taken pursuant to this Consent
4 Order shall be undertaken in accordance with the requirements of
5 all applicable local, state, and federal laws and regulations.

6 XVI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

7 Montrose agrees to indemnify and hold harmless EPA, and its
8 departments, employees, and agents when acting under EPA's
9 direction, from all claims or causes of action arising solely and
10 exclusively from or on account of acts or omissions of Montrose,
11 and its officers, employees, or agents acting under Montrose's
12 direction in the performance of the tasks lawfully required by
13 this Consent Order. Montrose will not indemnify EPA, its depart-
14 ments, employees and agents from claims or causes of action
15 arising in whole or in part from or on account of acts or omissions
16 of EPA and its departments, employees and agents in conjunction
17 with the performance of this Consent Order, or from claims or
18 causes of action with respect to which EPA is entitled to sovereign
19 or statutory immunity. This agreement shall not cover any costs
20 or expenses incurred in defending EPA against claims or causes of
21 action covered by this agreement.

22 XVII. DISCLAIMER OF EPA LIABILITY

23 EPA shall not be liable for the contracts, acts, errors
24 or omissions of the agents, employees or contractors of Montrose
25 entered into, committed or performed with respect to or in the
26 performance of this Consent Order, nor shall EPA be liable for
27 any injury or damages to persons or property resulting from the
28 acts or omissions of Montrose, its agents, contractors or employees

1 in carrying out activities pursuant to this Consent Order. Any
2 standards, procedures or protocols prescribed in this Consent
3 Order, as well as the oversight and review of the implementing
4 plans to be followed by Montrose in the performance of its obli-
5 gations under this Consent Order are for assurance of the quality,
6 accuracy and completeness of the Remedial Investigative Work and
7 do not constitute a right to control the actions of Montrose other
8 than to the extent specifically provided for in this Consent
9 Order.

10 EPA is not a party to any contract Montrose may enter into
11 regarding the work to be performed at the Site. Nothing contained
12 in this Consent Order shall be construed to create, either expressly
13 or by implication, the relationship of agency between EPA and
14 Montrose. Montrose, its employees and contractors are not
15 authorized to represent or act on behalf of EPA, its employees
16 and contractors in any matter related to this Consent Order. To
17 the extent of any conflict between this Article and the provisions
18 of Article XVI, Article XVI shall control.

19 XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

20 In consideration of the extensive negotiations between
21 Montrose and EPA prior to the issuance of this Consent Order
22 concerning its terms, Montrose agrees that there is no need for
23 a further settlement conference.

24 The effective date of this Consent Order shall be the date
25 on which it is signed by EPA. EPA shall provide Montrose immediate
26 notification of EPA's execution of the Consent Order. This Consent
27 Order may be amended by mutual agreement of EPA and Montrose.
28 Such amendments shall be in writing and shall have as the effective

1 date, that date on which such amendments are signed by EPA.

2 Any reports, plans, specifications, schedules, and attach-
3 ments required by this Consent Order are, upon approval by EPA,
4 incorporated into this Consent Order.

5 No informal advice, guidance, suggestions, or comments by any
6 EPA employee or contractor regarding reports, plans, specifi-
7 cations, schedules, and any other writing submitted by Montrose
8 will be construed as relieving Montrose of its obligation to
9 obtain such formal approval as may be required by this Consent
10 Order, except as expressly stated in Article X.

11 XIX. PARTIES BOUND

12 This Consent Order shall apply to and be binding upon
13 Montrose and EPA, their agents, successors, and assigns. No
14 change in ownership or corporate status relating to the Site
15 shall in any way alter Montrose's responsibility under this
16 Consent Order. Montrose will remain the respondent under this
17 Consent Order and will be responsible for carrying out all
18 activities required of Montrose under this Consent Order.

19 Montrose shall provide a copy of this Consent Order to all
20 contractors, sub-contractors, and consultants retained to conduct
21 any portion of the work performed pursuant to this Consent Order
22 within fourteen (14) calendar days of the effective date of this
23 Consent Order or date of such retention.

24 XX. NOTICE TO THE STATE

25 EPA has notified the State of California pursuant to the
26 requirements of Section 106(a) of CERCLA.

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XXI. NOTICE TO THE PARTIES

Except as otherwise in Article IV, all notices required under this Consent Order shall be transmitted via certified mail, return receipt requested as follows:

A. For EPA:

Lisa Haage, Assistant Regional Counsel
EPA Region IX
215 Fremont Street
San Francisco, California 94105

Therese Gioia, (T-4-2)
Address as above

Alexis Strauss, (T-4-2)
Address as above

Harry Seraydarian, Director
Toxics and Waste Management Division, (T-1)
Address as above

B. For Montrose:

Samuel Rotrosen, President
Montrose Chemical Corporation of California
One Metro Plaza, Suite 301
505 Thornall Street
Edison, New Jersey 08837

Karl Lytz, Esq.
Latham and Watkins
701 "B" Street, Suite 2100
San Diego, California 92101-8197

Mr. Edward Nemecek
Hargis & Associates
2223 Avenida De La Playa, Suite 300
La Jolla, California 92037

XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Montrose's receipt of written notice from EPA that Montrose has demonstrated, to the satisfaction of

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///

1 EPA, that all of the terms of this Consent Order and Appendix A
2 have been completed.

3 IT IS SO AGREED AND ORDERED:

4
5
6 BY: Samuel Rotrosen
7 Samuel Rotrosen, President
8 Montrose Chemical
9 Corporation of California

10/22/85
Date

10 BY: Harry Seraydarian
11 Harry Seraydarian, Director
12 Toxic and Waste Management Division
13 U.S. Environmental Protection Agency
14 Region IX

10/28/85
Date

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Effective Date: October 28, 1985

APPENDIX A

I. INTRODUCTION

- A. Scope of Work: The tasks specified below correspond to those presented in the EPA Remedial Investigation/Feasibility Study ("RI/FS") Work Plan (Metcalf & Eddy, Inc., October 1984) ("EPA RI/FS Work Plan"). Such tasks as modified in the paragraphs below constitute the "Remedial Investigative Work" or "RIW" for the purposes of Consent Order 85-04 ("Consent Order"). The modifications below, however, do not constitute an amendment to the EPA RI/FS Work Plan.
- B. Target Chemicals: As used in this Appendix, "Target Chemicals" means monochlorobenzene ("MCB") and DDT (DDT includes total DDT and its metabolites total DDD and total DDE) plus a maximum of two (2) other chemicals which EPA may select based on the results of its Part 1 Remedial Investigation; provided, however, that where the transport mechanism away from the Site precludes a reasonable expectation of detecting volatile organics, volatile organics will not be included in Target Chemicals. The selection of the two additional chemicals is subject to Article X of the Consent Order. Target Chemicals may be expanded or reduced upon mutual consent of Montrose and EPA.

II. OFF-SITE SOIL, SEDIMENT, AND SURFACE WATER SAMPLING

A. Scope of Work:

Montrose shall conduct Task 14 of the EPA RI/FS Work Plan as specified in and modified by the paragraphs below. In addition, Montrose shall conduct tasks 5, 6, 7, and 8, of the EPA RI/FS Work Plan as needed in order to complete Task 14 properly. Task 6 is modified with the deletion of the last paragraph on pages 2-9 and 2-10. The work shall be conducted in accordance with applicable guidance in the EPA RI/FS Work Plan.

- 1) Off-site Soils: Montrose shall install and sample soil borings around the perimeter of the Site, in near-Site drainage areas between the Site and Farmers Brother catch basin and in the utility easement, and in the readily accessible historical drainage path area through Farmer Brothers and Jones Chemical, and analyze the samples for Target Chemicals. Among other things, the specific locations of the borings and specific boring intervals to be sampled, sampling protocol including arrangements to allow EPA to take split/ duplicate samples, and accompanying rationale, should be included in the sampling plan. The approximate scope of this part of RIW is as follows:

- a) Perimeter: approximately fifteen (15) soil borings;
 - b) Historic drainage area through Farmer Brothers and Jones Chemical: approximately eight (8) soil borings;
 - c) Near-Site drainage area to Farmer Brothers catch basin and in utility easement: approximately thirty-two (32) soil borings;
 - d) Soil borings and samples: soil boring samples will be taken at one (1) foot intervals to a depth of five (5) feet;
 - e) Analytic phasing: EPA will consider phased analysis of soil boring samples for the purpose of minimizing costs where possible.
- 2) Neighborhood Soils: Montrose shall conduct surface soil sampling in the designated neighborhood areas, and shall analyze the samples for Target Chemicals. EPA agrees to consider a phased approach to the neighborhood surface soil sampling. Among other things, the specific sampling scheme, sampling protocol including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale, should be presented in the sampling plan. The sampling plan must describe when and if a second phase of the neighborhood surface soil sampling will be conducted. Montrose shall collect and analyze approximately seventeen (17) samples in the first phase. The sampling depth will be approximately 0 - 6 inches with one analysis per sample.
- 3) Off-site Sediments: Montrose shall conduct sediment sampling in the Kenwood Drain, Torrance Lateral, Dominguez Channel, and Consolidated Slip, and analyze the samples for Target Chemicals. Among other things, the specific locations of the samples and contingencies for possible lack of sampling material, and sampling protocol including arrangements to allow EPA to take split/duplicate samples, should be presented in the sampling plan. The approximate scope of this part of RIW is as follows:
- a) Kenwood Drain: a sediment sample from each manhole where sediment is present (approximately five (5) samples if available);

- b) Torrance Lateral: approximately five (5) sediment samples if sufficient sediment is present;
 - c) Dominguez Channel: approximately two (2) upstream and three (3) downstream sediment samples;
 - d) Consolidated Slip: approximately ten (10) locations with five (5) samples per location, to be composited for a single analysis for each sample location.
- 4) Off-site Surface Water: Montrose shall conduct surface water sampling from Montrose into Torrance Lateral, upstream and downstream in Dominguez Channel, and in Consolidated Slip, and analyze the samples for Target Chemicals. Among other things, sampling locations, and sampling protocol including arrangements to allow EPA to take split/duplicate samples, should be specified in the sampling plan. Montrose agrees to collect and analyze surface water samples following the general outline presented in Table 7, page 2-30 of the EPA RI/FS Work Plan with the following modifications to Table 7:
- a) Five (5) samples (not ten) per storm episode in the area from Montrose into Torrance Lateral;
 - b) All samples will be analyzed unfiltered with a portion also being analyzed after filtration;
 - c) Consolidated Slip - approximately ten (10) dry weather water samples and ten (10) wet weather water samples.

Montrose shall collect and analyze approximately sixty (60) surface water samples.

B. Schedule

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- 1) Commencement and Implementation: Montrose shall commence the EPA-approved sampling plan for Task 14 within twenty (20) to forty-five (45) calendar days of receiving EPA-approval for its plans, unless an earlier date is mutually agreed upon. Montrose shall implement the plan in accordance with the schedule in the final EPA-approved plan or a subsequent EPA-approved schedule.
 - 2) Information Submission: Within ^{forty 30} twenty (20) calendar days of the completion of a sampling round event as described

above, Montrose shall submit to EPA the following information as appropriate: boring logs, description of weather conditions, pH, temperature, conductivity, HNu or OVA measurements, and sampling locations.

- 3) Analytic Data Submission: Within fifteen (15) calendar days after receiving final laboratory analytic results on a round of samples taken in conjunction with the RIW off-site soil, sediment, and surface water investigation, or within forty-five (45) calendar days after the completion of the sampling round event, whichever is sooner, Montrose shall submit to EPA copies of: the raw analytic results and any QA/QC procedures provided by the laboratory; a description of the specific location and depth (if appropriate) for each analytical value; a description of any deviations from protocols presented in the sampling plan and QAPP; and, a description of any sampling difficulties encountered. Montrose shall use its best efforts to obtain and submit raw analytic results and the other associated information and data within forty-five (45) calendar days of the completion of an RIW off-site soil, sediment, and surface water investigation sampling round. For the purposes of this paragraph, best efforts means an offer by Montrose to pay a premium to the laboratory (not in excess of 50% of the analytic cost for the sampling round were it to be performed in normal course by the laboratory) to ensure receipt of the laboratory analytic results within forty-five (45) calendar days or as soon thereafter as is practicable. Provided, however, that Montrose bears the burden of proof to show that best efforts have been made to meet the deadline, and Montrose shall submit the data received as a result of best efforts no later than seven (7) calendar days from the date of receipt from the laboratory of such data.
- 4) EPA Data: EPA shall make its best efforts to submit all analytical results from split/ duplicate samples within forty-five (45) days of a sampling round event as specified above. However, should the deadline be exceeded due to institutional constraints, EPA shall submit all such data upon receipt.
- 5) Technical Meeting: Subsequent to the exchange of all information and data as provided in paragraphs II(B)(2) through II(B)(4) above and a reasonable period in which to formulate preliminary opinions on the data, EPA and Montrose shall have a technical meeting.
- 6) Completion Notification: EPA shall provide Montrose with written notification of Montrose's successful completion of Task 14 of RIW as described above.

III. ON-SITE AND OFF-SITE GROUNDWATER AND ON-SITE SOILS INVESTIGATIONS

A. Scope of Work:

By this Consent Order, Montrose agrees to conduct phased on-site and off-site groundwater and on-site soils investigations as described below. If EPA determines that additional groundwater or on-site soils investigations are necessary, the performance of such work is subject to the provisions of Article IV(K) of the Consent Order.

1) Phase 1:

- a) On-site Bellflower Aquitard: Montrose shall install approximately four (4) on-site groundwater monitoring wells screened in the Bellflower Aquitard, to a depth of approximately 100 feet. Among other things, the location, drilling method, construction details, sampling protocol including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale, should be included in the Phase 1 sampling plan. Montrose shall provide lithologic logs of the well borings, develop the wells, measure water levels and construct water level contours, and collect and analyze water samples from the wells for Target Chemicals. Additional shallow on-site wells (not to exceed four) may be constructed in the event that: (1) they are required to determine the direction of flow in the Bellflower Aquitard; and, (2) they are required to define further the extent of on-site Bellflower Aquitard contamination and there is no need to construct any off-site wells pursuant to paragraph III(A)(2)(a) below.
- b) On-site Gage Aquifer: After gathering water level measurements from the on-site Bellflower Aquitard wells described in paragraph III(A)(1)(a) above, Montrose shall install approximately three (3) on-site groundwater monitoring wells screened in the Gage Aquifer, to a depth of approximately 150 feet. Among other things, the location, drilling method, construction details, sampling protocol including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale, should be included in the Phase 1 sampling plan. Montrose shall provide lithologic logs of the well borings, develop the wells, measure water levels and construct water level contours, and collect and analyze samples from the wells for Target Chemicals. If EPA determines, based upon the data generated from the three initial on-site Gage Aquifer wells,

that a fourth on-site Gage Aquifer well is necessary in order to define the direction of flow in the Gage Aquifer or to verify non-contamination of the Gage Aquifer by past activities at the Montrose site and such information is reasonably required for the completion of the Phase 1 investigation, Montrose shall install a fourth on-site well in the Gage Aquifer at the location agreed upon by EPA.

- c) On-site Soils Work: Montrose shall conduct additional on-site soils investigations to obtain data to characterize deep soils in the vicinity of the former on-site impoundment. Montrose shall auger approximately 240 lineal feet of soil borings, collect 48 soil samples and analyze 24 of these samples for Target Chemicals. Among other things, the location, drilling method, sampling intervals, and sampling protocols, including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale should be included in the Phase 1 sampling plan.

2) Phase 2:

- a) Off-site Bellflower Aquitard: If EPA determines, based on the results of the Phase 1 RIW groundwater investigation, that off-site shallow groundwater monitoring wells are necessary, in order to define further any contaminant plume emanating from the Site in the Bellflower Aquitard, Montrose shall install approximately four (4) off-site groundwater monitoring wells screened in the Bellflower Aquitard, to a depth of approximately 100 feet. Among other things, the location, drilling method, construction details, sampling protocol including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale should be included in the Phase 2 sampling plan. Montrose shall provide lithologic logs of all well borings, develop the wells, measure water levels and construct water level contours, and collect and analyze samples from the wells for Target Chemicals.
- b) On-site Lynwood Aquifer: If contaminants from the Montrose Site are detected in the Gage Aquifer during the Phase 1 RIW groundwater investigation, and if EPA determines that there is a reasonable possibility that such contaminants may have migrated further downward, Montrose shall install one (1) on-site groundwater monitoring well screened in the Lynwood Aquifer, to a depth of approximately 250 feet. Among other things, the location, drilling method,

construction details, sampling protocol including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale, should be presented in the Phase 2 sampling plan. Montrose shall provide a lithologic log of the well boring, develop the well, measure the water level, and collect and analyze samples from the well for Target Chemicals.

- c) On-site Soils Work: If EPA determines, based upon the results of the Phase 1 deep on-site soils work conducted pursuant to paragraph III(A)(1)(c) above, that reasonable scientific assumptions about the distribution of contaminants in deep on-site soils in the vicinity of the former on-site impoundment cannot be made, Montrose shall auger approximately 120 lineal feet of soil borings, collect 24 soil samples and analyze 12 of them for Target Chemicals. Among other things, the location, drilling method, sampling intervals, and sampling protocols, including arrangements to allow EPA to take split/duplicate samples, and accompanying rationale should be included in the Phase 2 sampling plan.

B. Schedule:

- 1) Phase 1 RIW Groundwater and On-site Soils Plans: Draft plans for the Phase 1 RIW groundwater and on-site soils investigations discussed in paragraph III(A)(1) above, shall be submitted to EPA within fifty (50) calendar days of Montrose's receipt of written notification from EPA that such plans are due. This notification shall not be given by EPA until such time as EPA has provided to Montrose, EPA's comments on the draft RIW Off-site Soil, Sediment, and Surface Water plans pursuant to Article IV(E) of the Consent Order, unless Montrose agrees to an earlier date.
- 2) Phase 2 RIW Groundwater and On-site Soils Plans: Draft plans for the Phase 2 RIW groundwater and on-site soils investigations discussed in paragraph III(A)(2) above, shall be submitted to EPA within 45 days of Montrose's receipt of written notification from EPA that such plans are due. This notification shall not be given by EPA until the conclusion of the Phase 1 RIW groundwater and on-site soils technical meeting between EPA and Montrose, conducted subsequent to the submission by Montrose of all required Phase 1 data or information.
- 3) Commencement and Implementation: Montrose shall commence the EPA-approved sampling plans for Phase 1 and 2 of this RIW groundwater and on-site soils investigations within a period of twenty (20) to forty-five (45) calendar

days of receiving EPA approval of the Phase 1 and 2 plans, unless an earlier date is mutually agreed upon. Montrose shall implement the EPA-approved Phase 1 and 2 plans in accordance with the schedules in the final EPA-approved plans or subsequent EPA-approved schedules.

- 4) Information Submission (Well and Soil Boring Completion): Within twenty (20) calendar days of completing the installation of a round of wells or on-site soil borings as described in Phase 1 and 2 of the RIW groundwater and on-site soil investigations, Montrose shall submit to EPA all the following information and data as appropriate: lithologic logs, geophysical logs, as-built well construction details, HNu or OVA measurements, description of weather conditions, and well or boring locations.
- 5) Information Submission (Well Measurement/Sampling/Testing): Within twenty (20) calendar days of completing a round of field measurements, sampling, or testing of Phase 1 or 2 wells associated with RIW or other existing on-site wells, Montrose shall submit to EPA the following information and data as appropriate: water level measurements, aquifer and well test data, pH, temperature, conductivity, HNu and OVA measurements, descriptions of weather conditions, and locations of measurements, sampling, or testing.
- 6) Analytic Data Submission: Within fifteen (15) calendar days after receiving final laboratory analytic results on a round of samples taken in conjunction with RIW groundwater or on-site soils investigations, or within forty-five (45) calendar days after the completion of the sampling round event, whichever is sooner, Montrose shall submit to EPA copies of: the raw analytic results and any QA/QC procedures provided by the laboratory; a description of the specific location and depth (if appropriate) for each analytical value; a description of any deviations from protocols presented in the sampling plans and QAPPs; and, a description of any sampling difficulties encountered. Montrose shall use its best efforts to obtain and submit raw analytic results and the other associated information and data within forty-five (45) calendar days of the completion of a RIW groundwater or on-site soils investigation sampling round. For the purposes of this paragraph, best efforts means an offer by Montrose to pay a premium to the laboratory (not in excess of 50% of the analytic cost for the sampling round were it to be performed in normal course by the laboratory) to ensure receipt of the laboratory analytic results within forty-five (45) calendar days or as soon thereafter as is practicable. Provided, however, that Montrose bears the burden of proof to show that best efforts have been made to meet the deadline, and Montrose shall submit the data received

as a result of best efforts no later than seven (7) calendar days from the date of receipt from the laboratory of such data.

- 7) EPA Data: EPA shall make its best efforts to submit all analytical results from split/ duplicate samples within forty-five (45) days of the completion of a sampling round of Phase 1 or 2 wells associated with RIW or existing on-site wells or with Phase 1 or 2 on-site soil borings. However, should the deadline be exceeded due to institutional constraints, EPA shall submit all such data upon receipt.
- 8) Technical Meeting: Subsequent to the exchange of all information and data as provided in paragraphs III(B)(4) through III(B)(7) above and a reasonable period in which to formulate preliminary opinions on the data, EPA and Montrose shall have a technical meeting.
- 9) Completion Notification: EPA shall provide Montrose with written notification of Montrose's successful completion of the RIW Phase 1 and 2 groundwater and on-site soils investigations as described above as appropriate.

IV. REMEDIAL INVESTIGATIVE WORK REPORT

A. Scope:

Montrose's RIW Report shall contain a description on how all RIW was implemented, tabulations of all data collected, and conclusions based on interpretations of the data. The RIW Report shall be prepared in accordance with the EPA Guidance on Remedial Investigations (June, 1985) as applicable to RIW.

B. Schedule:

- 1) Draft Report: Montrose shall prepare and submit a draft RIW Report to EPA within thirty (30) calendar days after receiving the later of the written completion notifications from EPA described in paragraphs II(B)(6) and III(B)(9) above.
- 2) EPA Comments: EPA shall notify Montrose in writing within forty-five (45) calendar days of receiving Montrose's draft RIW Report of any deficiencies or comments it may have on the draft RIW Report.
- 3) Technical Meeting and Final Report: EPA and Montrose may have a technical meeting within ten (10) calendar days of Montrose's receipt of EPA's comments, to discuss such comments. If such a meeting is not requested, Montrose

shall prepare and submit a final RIW Report to EPA within thirty (30) calendar days after receiving EPA's written notice of any deficiencies or comments on the draft RIW Report. If such a meeting is requested, Montrose shall prepare and submit a final RIW Report to EPA within thirty (30) calendar days after the technical meeting.

V. STIPULATED PENALTY SCHEDULE

Pursuant to Article XI of Consent Order 85-04, stipulated penalties may accrue from a failure to meet deadlines specified in the Consent Order, subsequent to the receipt of dispute resolution determinations from EPA issued under Article X(B) of the Consent Order, or subsequent to notification from EPA that Montrose conducted RIW prior to obtaining EPA approval. Two tiers of penalties are specified: Category A and Category B penalties. The events constituting Category A and Category B penalties for the purposes of Article XI of the Consent Order are listed below.

A. Category A Penalties

1. Failure by Montrose to Meet Deadlines:

- a) Failure to provide EPA 20-calendar day advance notice of sampling activity as required by Article VIII of the Consent Order;
- b) Failure to provide information or data with 20 calendar days as specified in paragraphs II(B)(2), III(B)(4), and III(B)(5) of this Appendix A;
- c) Failure to submit the final RIW Report within the time limits specified in paragraph IV(B)(3) of this Appendix A.

2. Failure to Comply With Dispute Resolution Determinations: Category A penalties apply to failure to comply with any dispute resolution determination made by EPA pursuant to Article X(B) of the Consent Order except as specified in paragraph V(B)(3) below.

B. Category B Penalties:

1. Failure by Montrose to Meet Deadlines:

- a) Failure to submit draft or final RIW sampling plans or QAPPs within the time limits specified in Article IV(D) or (E) of the Consent Order and/or paragraphs III(B)(1) and (2) of this Appendix A;

- b) Failure to commence work on approved RIW sampling plans within 20-45 days of approval by EPA as specified in paragraphs II(B)(1) and III(B)(3) of this Appendix A;
 - c) Failure to submit raw analytic data and other information as specified in paragraphs II(B)(3) and III(B)(6) of this Appendix A;
 - d) Failure to submit the draft RIW Report within the time limits specified in paragraph IV(B)(1) of this Appendix A.
2. Performance of RIW prior to obtaining the EPA approvals required by this Consent Order.
3. Failure to Comply With Dispute Resolution Determinations: Category B penalties apply to failure to comply with a dispute resolution determination made by EPA pursuant to Article X(B) of the Consent Order with respect to disputes arising from events related to the Category B penalties specified in paragraphs V(B)(1) and V(B)(2) above.

VI. EPA REMEDIAL INVESTIGATION WORK

EPA will be conducting any portions of the EPA RI/FS Work Plan and amendments which Montrose does not conduct. EPA shall submit all EPA sampling plans and QAPPs for such work to Montrose when the plans are drafted. EPA shall submit all analytical results from any such work to Montrose upon receipt.